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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY,	)	No. DE 99TC S-206
	)	
Plaintiff,	)	<b>CONSENT DECREE</b>
	)	
v.	)	
	)	
TIME OIL CO.,	)	
	)	
Defendant.	)	

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the  
3 Washington State Department of Ecology (Ecology), and Time Oil Co. (Time) is to provide for  
4 remedial action at a facility where there has been a release or threatened release of hazardous  
5 substances. This Decree requires Time to undertake the following remedial action(s):

6 (1) Design, install and operate an *in-situ* groundwater air sparging and soil vapor  
7 extraction system in the station area to remediate contaminated soil, and groundwater;

8 (2) Design and install extraction wells and piping in the distal end of the plume to  
9 capture contaminated groundwater and to transfer the water to the existing treatment facility  
10 located at the distal end of the plume.

11 (3) Maintain and operate the existing groundwater interception trench system.

12 (4) Perform compliance monitoring to determine the effectiveness of remedial  
13 actions.

14 Ecology has determined that these actions are necessary to protect public health and the  
15 environment.

16 B. The Complaint in this action is being filed simultaneously with this Decree. An  
17 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
18 However, the parties wish to resolve the issues raised by Ecology's complaint. In addition, the  
19 parties agree that settlement of these matters without litigation is reasonable and in the public  
20 interest and that entry of this Decree is the most appropriate means of resolving these matters.

21 C. In signing this Decree, Time agrees to its entry and agrees to be bound by its  
22 terms.

23 D. By entering into this Decree, the parties do not intend to discharge non-settling  
24 parties from any liability they may have with respect to matters alleged in the complaint. The  
25 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
26 sums expended under this Decree.



1 III. PARTIES BOUND

2 This Decree shall apply to and be binding upon the signatories to this Decree (parties),  
3 their successors and assigns. The undersigned representative of each party hereby certifies that  
4 he or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
5 comply with the Decree. Time agrees to undertake all actions required by the terms and  
6 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change  
7 in ownership or corporate status shall alter the responsibility of Time under this Decree. Time  
8 shall provide a copy of this Decree to all agents, contractors and subcontractors retained to  
9 perform work required by this Decree and shall ensure that all work undertaken by such  
10 contractors and subcontractors will be in compliance with this Decree.

11 IV. DEFINITIONS

12 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms in  
13 this Decree.

14 A. Site: The site, referred to as Handy Andy No. 8, is located 3314 Northeast 44<sup>th</sup>  
15 Street, Vancouver, Washington, and includes all areas where hazardous substances, related to the  
16 past gasoline release(s) from 3314 Northeast 44<sup>th</sup> Street, Vancouver, Washington, have come to  
17 be located as described in Exhibit B. The site is more particularly described in Exhibit A to this  
18 Decree, which is a vicinity map and detailed site diagram.

19 B. Parties: Refers to the Washington State Department of Ecology and Time Oil Co.

20 C. Time: Refers to Time Oil Co.

21 D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits  
22 to the Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms  
23 "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

24 E. Remediation System: Refers to any remediation system component, including but  
25 not limited to remediation wells, piping, buildings, holding tanks, transfer equipment, discharge  
26

1 structures, monitoring well, or other equipment associated with investigation or cleanup of the  
2 past gasoline release(s) at the Site.

3 V. STATEMENT OF FACTS

4 Ecology asserts the following findings of fact without any express or implied admissions  
5 by Defendant.

6 1. The upland portion of the site is a convenience store and gasoline station. There are  
7 three active gasoline tanks on site with a total capacity of 30,000 gallons installed by owner Mr.  
8 Randy Anderson in 1991. Two tanks contain alcohol gasoline and one tank contains unleaded  
9 gasoline. The Ecology underground storage tank (UST) facility number is 004084.

10 2. Mrs. Elsie Grooms bought the property in 1967 and had a convenience store built.

11 3. Mr. Larry Nelson bought the business rights for the property from Mrs. Grooms in  
12 1973. Mr. Nelson installed two USTs around 1974 or 1975 ("original UST System"). Both  
13 tanks were 8,000 gallons in capacity. Mr. Nelson owned and operated the UST system until it  
14 was sold in May 1981 to Mr. Anderson. Mr. Anderson owned and operated the Original UST  
15 System between May 1981 and November 1981.

16 4. Time purchased the Original UST System from Mr. Anderson in November 1981.  
17 Mr. Anderson operated the Original UST System between 1981 and 1991 under an agreement  
18 with Time. Time owned the tanks and dispensers, while operation of the UST system was  
19 accomplished jointly by Time and by Mr. Anderson. Unleaded and leaded gasoline was stored  
20 during the period of the agreement. The business was named Handy Andy No. 8.

21 5. Shannon & Wilson, Inc., conducted a soil vapor assessment for Time in August 1991  
22 on the Handy Andy No. 8 site prior to decommissioning the Original UST System. Results of  
23 the data obtained suggested that a volatile organic plume was present in soil at the site and that  
24 the contamination originated from the Original UST System on the property. Results of the study  
25 are documented by Shannon & Wilson, Inc., in Technical Memorandum 01 dated September 9,  
26 1991.

1           6. Time removed the Original UST System in September 1991 as an independent  
2 cleanup action. Petroleum contaminated soil was encountered at that time. Groundwater was not  
3 encountered during the initial tank removal activities. Petroleum contaminated soil (900 – 1,000  
4 cubic yards) was excavated from the site and remediated on adjacent property.

5           7. Science & Engineering Analysis Corporation (SECOR) conducted a site  
6 characterization on the site and presented their findings in their reports, Phase II Site Assessment  
7 Report, dated February 3, 1993, and Phase II Off-Site Subsurface Characterization and Remedial  
8 Investigation Report, dated May 10, 1993. SECOR concluded that groundwater has been  
9 contaminated with dissolved hydrocarbons and that the contaminated plume had migrated off the  
10 Handy Andy No. 8 property.

11           8. In the spring of 1993, Time discovered that dissolved and free phase petroleum  
12 product had impacted groundwater discharging to ground surface as seeps 1,800 feet southwest  
13 of the service station. The contaminated seeps were located above Burnt Bridge Creek in Arnold  
14 Park and close to a private residence.

15           9. Time entered into Agreed Order No. DE 93TC-S274 with Ecology October 22, 1993.  
16 The work performed under the agreed order was the completion of a site characterization,  
17 documentation of all independent remedial actions taken during independent cleanup, and the  
18 installation and operation of an interim groundwater recovery and treatment system. The work  
19 was performed by Time Oil Co. and its consultants SECOR and AGRA Earth and Environmental  
20 (AGRA). The work completed is documented in the report prepared by AGRA, Site Update  
21 Report, dated February 3, 1995 and in the SECOR engineering report for the interim groundwater  
22 treatment facility, Operation and Maintenance Manual Groundwater Collection and Treatment  
23 System, dated May 25, 1994.

24           10. Time and its consultants have submitted quarterly groundwater and compliance  
25 reports to Ecology since March 1994.  
26

1 11. March 13, 1995, Amendment No. 1 to Agreed Order DE 93TC-S274 went into effect  
2 for Time to complete a remedial investigation and feasibility study for the site. The work  
3 completed by Time and its consultant, AGRA, is documented in the report Remedial  
4 Investigation/Feasibility Study dated February 10, 1999.

5 12. Time was issued a National Pollutant Discharge Elimination System Waste Discharge  
6 Permit (NPDES) No. WA0040967 September 12, 1997, for the discharge of treated groundwater  
7 from the treatment facility to Burnt Bridge Creek.

8 13. Ecology completed a draft cleanup action plan (CAP, Exhibit B) and draft Scope of  
9 Work and Schedule (Exhibit C) in April 1999.

#### 10 VI. WORK TO BE PERFORMED

11 This Decree contains a program designed to protect public health, welfare and the  
12 environment from the known release, or threatened release, of hazardous substances or  
13 contaminants at, on, or from the site.

14 1. Time shall perform the remedial actions specified in detail in the Scope of Work and  
15 Schedule (Exhibit C) and the Cleanup Action Plan (Exhibit B). These exhibits are incorporated  
16 by reference and are an integral and enforceable part of this Decree. A summary of the work  
17 program to be performed is as follows:

- 18 a. Submission of draft and final Engineering Design Reports;
- 19 b. Remedial Action Construction/Implementation; and
- 20 c. Operation, maintenance, monitoring and reporting on the remedial actions.

21 2. The substantive permit requirements must be implemented as described in Exhibit F  
22 attached hereto.

23 3. Time agrees not to perform any remedial actions outside the scope of this Decree  
24 unless the parties agree to amend the scope of work to cover these actions. All work conducted  
25 under this Decree shall be done in accordance with ch. 173-340 WAC unless otherwise provided  
26 herein.



1 VII. DESIGNATED PROJECT COORDINATORS

2 The project coordinator for Ecology is:

3 Patricia L. Martin  
4 Washington State Department of Ecology  
5 Southwest Regional Office  
6 P.O. Box 47775  
Olympia, Washington 98504-7775  
(360) 407-6245

7 The project coordinator for Time is:

8 Kevin M. Murphy  
9 Time Oil Co.  
2737 West Commodore Way  
10 P. O. Box 24447  
11 Seattle, Washington 98124-0447  
(206) 286-6443

12 Each project coordinator shall be responsible for overseeing the implementation of this  
13 Decree. The Ecology project coordinator will be Ecology's designated representative at the site.  
14 To the maximum extent possible, communications between Ecology and Time and all  
15 documents, including reports, approvals, and other correspondence concerning the activities  
16 performed pursuant to the terms and conditions of this Decree, shall be directed through the  
17 project coordinators. The project coordinators may designate, in writing, working level staff  
18 contacts for all or portions of the implementation of the remedial work required by this Decree.  
19 The project coordinators may agree to minor modifications to the work to be performed without  
20 formal amendments to this Decree. Minor modifications will be documented in writing by  
21 Ecology.

22 Any party may change its respective project coordinator. Written notification shall be  
23 given to the other parties at least ten (10) calendar days prior to the change.  
24  
25  
26

1 VIII. PERFORMANCE

2 All work performed pursuant to this Decree shall be under the direction and supervision,  
3 as necessary, of a professional engineer or hydrogeologist, or geologist or equivalent, with  
4 experience and expertise in hazardous waste site investigation and cleanup. Any construction  
5 work must be under the supervision of a professional engineer. Time shall notify Ecology in  
6 writing as to the identity of such engineer(s) or hydrogeologist(s), or geologist(s) or others and of  
7 any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance  
8 of their involvement at the site.

9 IX. ACCESS

10 Ecology or any Ecology authorized representatives shall have the authority to access and  
11 freely move about all Remediation Systems and any property Time owns at the site at all  
12 reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts  
13 related to the work being performed pursuant to this Decree; reviewing Time's progress in  
14 carrying out the terms of this Decree; conducting such tests or collecting such samples as  
15 Ecology may deem necessary; using a camera, sound recording, or other documentary type  
16 equipment to record work done pursuant to this Decree; and verifying the data submitted to  
17 Ecology by Time. Ecology shall, except for emergency/surprise inspections, attempt to provide  
18 reasonable advance notice of the need for site access and shall provide Time the opportunity to  
19 collect split or replicate samples unless doing so interferes with Ecology's sampling. All parties  
20 with access to Remediation Systems pursuant to this paragraph shall comply with approved  
21 health and safety plans.

22 Time shall make a good faith effort to obtain property access to the Site to implement this  
23 decree. If Time fails to obtain access to the Site, Ecology shall make reasonable efforts to  
24 cooperate with Time to obtain access to real property owned by third parties as necessary to  
25 conduct investigative and remedial activities, including the installation and maintenance of  
26 Remediation Systems. This shall include, without limitation, exercise of the authority provided

1 to Ecology pursuant to RCW 70.105D.030(1)(a) and (b), 70.105D.050, and  
2 70.105D.020(12)(b)(iv)(D).

3 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

4 With respect to the implementation of this Decree, Time shall make the results of all  
5 sampling, laboratory reports, and/or test results generated by it, or on its behalf available to  
6 Ecology and shall submit these results in accordance with Section XI of this Decree.

7 In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted  
8 according to Appendix E: GROUND WATER SAMPLING DATA SUBMITTAL  
9 REQUIREMENTS. These submittals shall be provided to Ecology in accordance with Section  
10 XI of this Decree.

11 If requested by Ecology, Time shall allow split or duplicate samples to be taken by  
12 Ecology and/or its authorized representatives of any samples collected by Time pursuant to the  
13 implementation of this Decree, provided it does not interfere with Time's sampling. Time shall  
14 notify Ecology seven (7) days in advance of any sample collection or work activity at the site.  
15 Ecology shall, upon request, allow split or duplicate samples to be taken by Time or its  
16 authorized representatives of any samples collected by Ecology pursuant to the implementation  
17 of this Decree provided it does not interfere with the Department's sampling. Without limitation  
18 on Ecology's rights under Section IX, Ecology shall endeavor to provide at least five (5) days'  
19 notice to Time prior to any sample collection activity.

20 XI. PROGRESS REPORTS

21 Time shall submit to Ecology written progress reports according to the schedule given in  
22 Task 4 of Exhibit C (Scope of Work and Schedule) of this Decree which describe the actions  
23 taken during the previous reporting period to implement the requirements of this Decree. The  
24 progress shall include the following:

25 A. A list of on-site activities that have taken place during the reporting period;  
26

1 B. Detailed description of any deviations from required tasks not otherwise  
2 documented in project plans or amendment requests;

3 C. Description of all deviations from the schedule (Exhibit C) during the current  
4 reporting period and any planned deviations in the upcoming reporting period;

5 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
6 compliance with the schedule;

7 E. All raw data (including laboratory analysis) received by Time during the past  
8 reporting period and an identification of the source of the sample;

9 F. A list of deliverables for the upcoming reporting period if different from the  
10 schedule; and

11 All progress reports shall be submitted by the tenth day of the month in which they are  
12 due following the reporting period that they document after the effective date of this Decree.  
13 Unless otherwise specified, progress reports and any other documents submitted pursuant to this  
14 Decree shall be sent by mail and, possibly also by e-mail, facsimile or other verifiable  
15 communication, to Ecology's project coordinator.

## 16 XII. RETENTION OF RECORDS

17 Time shall preserve, during the pendency of this Decree and for ten (10) years from the  
18 date this Decree is no longer in effect as provided in Section XXV, all records, reports,  
19 documents, and underlying data in its possession relevant to the implementation of this Decree  
20 and shall insert in contracts with project contractors and subcontractors a similar record retention  
21 requirement. Upon request of Ecology, Time shall make all non-archived records available to  
22 Ecology and allow access for review. All archived records shall be made available to Ecology  
23 within a reasonable period of time.

1 XIII. TRANSFER OF INTEREST IN PROPERTY

2 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,  
3 or other interest in any component of the Remediation System and property owned by Time, or  
4 any lease, easement or access agreement relating thereto, shall be consummated without  
5 provision for continued operation and maintenance of any containment system, treatment system,  
6 and monitoring system installed or implemented pursuant to this Decree.

7 Prior to transfer of any legal or equitable interest in all or any component of the  
8 Remediation System, any property owned by Time, and or any lease, easement or access  
9 agreement relating there to during the effective period of this Decree, Time shall deliver a copy  
10 of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in  
11 interest of the Remediation System and any property owned by Time, and at least thirty (30) days  
12 prior to any transfer, Time shall notify Ecology of said contemplated transfer.

13 XIV. RESOLUTION OF DISPUTES

14 A. In the event a dispute arises as to an approval, disapproval, proposed modification  
15 or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute  
16 resolution procedure set forth below.

17 (1) Upon receipt of the Ecology project coordinator's decision, Time has fourteen (14)  
18 days within which to notify Ecology's project coordinator of its objection to the decision.

19 (2) The parties' project coordinators shall then confer in an effort to resolve the  
20 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
21 Ecology's project coordinator shall issue a written decision.

22 (3) Time may then request Ecology management review of the decision. This request  
23 shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of  
24 receipt of Ecology's project coordinator's decision.

1 (4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a  
2 written decision regarding the dispute within thirty (30) days of Time's request for review. The  
3 Program Manager's decision shall be Ecology's final decision on the disputed matter.

4 B. If Ecology's final written decision is unacceptable to Time, Time has the right to  
5 submit the dispute to the Court for resolution. The parties agree that one judge should retain  
6 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.  
7 In the event Time presents an issue to the Court for review, the Court shall review the action or  
8 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious  
9 and render a decision based on such standard of review.

10 C. The parties agree to only utilize the dispute resolution process in good faith and  
11 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
12 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the  
13 other party may seek sanctions.

14 Implementation of these dispute resolution procedures shall not provide a basis for delay  
15 of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension  
16 or the Court so orders.

#### 17 XV. AMENDMENT OF CONSENT DECREE

18 This Decree may only be amended by a written stipulation among the parties to this  
19 Decree that is entered by the Court or by order of the Court. Such amendment shall become  
20 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by  
21 any party to the Decree.

22 Time shall submit any request for an amendment to Ecology for approval. Ecology shall  
23 indicate its approval or disapproval in a timely manner after the request for amendment is  
24 received. If the amendment to the Decree is substantial, Ecology will provide public notice and  
25 opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does  
26

1 not agree to any proposed amendment, the disagreement may be addressed through the dispute  
2 resolution procedures described in Section XIV of this Decree.

3 **XVI. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be granted only when a request for an extension is  
5 submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for  
6 which the extension is requested, and good cause exists for granting the extension. All  
7 extensions shall be requested in writing. The request shall specify the reason(s) the extension is  
8 needed.

9 An extension shall only be granted for such period of time as Ecology determines is  
10 reasonable under the circumstances. A requested extension shall not be effective until approved  
11 by Ecology or the Court. Ecology shall act upon any written request for extension in a timely  
12 fashion. It shall not be necessary to formally amend this Decree pursuant to Section XV when a  
13 schedule extension is granted.

14 B. The burden shall be on Time to demonstrate to the satisfaction of Ecology that the  
15 request for such extension has been submitted in a timely fashion and that good cause exists for  
16 granting the extension. Good cause includes, but is not limited to, the following.

17 (1) Circumstances beyond the reasonable control and despite the due diligence of  
18 Time including delays caused by unrelated third parties or Ecology, such as (but not limited to)  
19 delays by Ecology in reviewing, approving, or modifying documents submitted by Time; or

20 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other  
21 unavoidable casualty; or

22 (3) Endangerment as described in Section XVII.

23 However, neither increased costs of performance of the terms of the Decree nor changed  
24 economic circumstances shall be considered circumstances beyond the reasonable control of  
25 Time.  
26

1 C. Ecology may extend the schedule for a period not to exceed ninety (90) days,  
2 except where an extension is needed as a result of:

3 (1) Delays in the issuance of a necessary permit which was applied for in a timely  
4 manner; or

5 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

6 (3) Endangerment as described in Section XVI.

7 Ecology shall give Time written notification in a timely fashion of any extensions granted  
8 pursuant to this Decree.

9 XVII. ENDANGERMENT

10 In the event Ecology determines that activities implementing or in noncompliance with  
11 this Decree, or any other circumstances or activities, are creating or have the potential to create a  
12 danger to the health or welfare of the people on the site or in the surrounding area or to the  
13 environment, Ecology may order Time to stop further implementation of this Decree for such  
14 period of time as needed to abate the danger or may petition the Court for an order as  
15 appropriate. During any stoppage of work under this section, the obligations of Time with  
16 respect to the work under this Decree which is ordered to be stopped shall be suspended and the  
17 time periods for performance of that work, as well as the time period for any other work  
18 dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this  
19 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

20 In the event Time determines that activities undertaken in furtherance of this Decree or  
21 any other circumstances or activities are creating an endangerment to the people on the site or in  
22 the surrounding area or to the environment, Time may stop implementation of this Decree for  
23 such period of time necessary for Ecology to evaluate the situation and determine whether Time  
24 should proceed with implementation of the Decree or whether the work stoppage should be  
25 continued until the danger is abated. Time shall notify Ecology's project coordinator as soon as  
26 possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter



1 provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees  
2 with Time's determination, it may order Time to resume implementation of this Decree. If  
3 Ecology concurs with the work stoppage, Time's obligations shall be suspended and the time  
4 period for performance of that work, as well as the time period for any other work dependent  
5 upon the work which was stopped, shall be extended, pursuant to Section XVI of this Decree, for  
6 such period of time as Ecology determines is reasonable under the circumstances. Any  
7 disagreements pursuant to this section shall be resolved through the dispute resolution procedures  
8 in Section XIV.

#### 9 XVIII. OTHER ACTIONS

10 Ecology reserves its rights to institute remedial action(s) at the site and subsequently  
11 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take any  
12 other enforcement action pursuant to available statutory authority under the following  
13 circumstances:

- 14 (1) Where Time fails, after notice, to comply with any requirement of this Decree;
- 15 (2) In the event or upon the discovery of a release or threatened release not addressed  
16 by this Decree, that Time fails to address in accordance with WAC 173-340-300;
- 17 (3) Upon Ecology's determination that action beyond the terms of this Decree is  
18 necessary to abate an emergency situation which threatens public health or welfare or the  
19 environment, that Time fails to address in accordance with WAC 173-340-430; or
- 20 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree  
21 as to which Ecology would be empowered to perform any remedial action or to issue an order  
22 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the  
23 geographic site described in Exhibit A and to those contaminants that Ecology knows to be at the  
24 site when this Decree is entered.

1 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural  
2 resources resulting from the release or threatened release of hazardous substances from Handy  
3 Andy No. 8.

4 Ecology reserves the right to take any enforcement action whatsoever, including a cost  
5 recovery action, against potentially liable persons not party to this Decree.

#### 6 XIX. INDEMNIFICATION

7 Time agrees to indemnify and save and hold the State of Washington, its employees, and  
8 agents harmless from any and all claims or causes of action for death or injuries to persons or for  
9 loss or damage to property arising from or on account of acts or omissions of Time, its officers,  
10 employees, agents, or contractors in entering into and implementing this Decree. However, the  
11 Time shall not indemnify the State of Washington nor save nor hold its employees and agents  
12 harmless from any claims or causes of action arising out of the negligent acts or omissions of the  
13 State of Washington, or the employees or agents of the State, in implementing the activities  
14 pursuant to this Decree.

#### 15 XX. COMPLIANCE WITH APPLICABLE LAWS

16 A. All actions carried out by Time pursuant to this Decree shall be done in  
17 accordance with all applicable federal, state, and local requirements, including requirements to  
18 obtain necessary permits, except as provided in paragraph B of this section.

19 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
20 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
21 local government permits or approvals for the remedial action under this Decree that are known  
22 to be applicable at the time of entry of the Decree have been included in Exhibit F, and are  
23 binding and enforceable requirements of the Decree.

24 Time has a continuing obligation to determine whether additional permits or approvals  
25 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under  
26 this Decree. In the event either Time or Ecology determines that additional permits or approvals

1 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under  
2 this Decree, it shall promptly notify the other party of this determination. Ecology shall  
3 determine whether Ecology or Time shall be responsible to contact the appropriate state and/or  
4 local agencies. If Ecology so requires, Time shall promptly consult with the appropriate state  
5 and/or local agencies and provide Ecology with written documentation from those agencies of  
6 the substantive requirements those agencies believe are applicable to the remedial action.  
7 Ecology shall make the final determination on the additional substantive requirements that must  
8 be met by Time and on how Time must meet those requirements. Ecology shall inform Time in  
9 writing of these requirements. Once established by Ecology, the additional requirements shall be  
10 enforceable requirements of this Decree. Time shall not begin or continue the remedial action  
11 potentially subject to the additional requirements until Ecology makes its final determination.

12 Ecology shall ensure that notice and opportunity for comment is provided to the public  
13 and appropriate agencies prior to establishing the substantive requirements under this section.

14 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
15 exemption from complying with the procedural requirements of the laws referenced in RCW  
16 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for  
17 the State to administer any federal law, the exemption shall not apply and Time shall comply  
18 with both the procedural and substantive requirements of the laws referenced in RCW  
19 70.105D.090(1), including any requirements to obtain permits.

## 20 XXI. REMEDIAL AND INVESTIGATIVE COSTS

21 Time agrees to pay costs incurred by Ecology pursuant to this Decree. These costs shall  
22 include work performed by Ecology or its contractors for, or on, the site under Ch. 70.105D  
23 RCW both prior to and subsequent to the issuance of this Decree for investigations, remedial  
24 actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall  
25 include costs of direct activities and support costs of direct activities as defined in WAC 173-  
26 340-550(2). Time agrees to pay the required amount within ninety (90) days of receiving from

1 Ecology an itemized statement of costs that includes a summary of costs incurred, an  
2 identification of involved staff, and the amount of time spent by involved staff members on the  
3 project. Ecology will provide a general statement of work performed upon request. Ecology will  
4 provide itemized statements quarterly. Failure to pay Ecology's costs within ninety (90) days of  
5 receipt of the itemized statement will result in interest charges.

## 6 XXII. IMPLEMENTATION OF REMEDIAL ACTION

7 If Ecology determines that Time has failed without good cause to implement the remedial  
8 action within a reasonable timeframe, Ecology may, after notice to Time, perform any or all  
9 portions of the remedial action that remain incomplete. If Ecology performs all or portions of the  
10 remedial action because of the Time's failure to comply with its obligations under this Decree,  
11 Time shall reimburse Ecology for the costs of doing such work in accordance with Section XXI,  
12 provided that Time is not obligated under this section to reimburse Ecology for costs incurred for  
13 work inconsistent with or beyond the scope of this Decree.

## 14 XXIII. FIVE YEAR REVIEW

15 As remedial action, including ground water monitoring, continues at the site, the parties  
16 agree to review the progress of remedial action at the site, and to review the data accumulated as  
17 a result of site monitoring as often as is necessary and appropriate under the circumstances. At  
18 least every five years the parties shall meet to discuss the status of the site and the need, if any, of  
19 further remedial action at the site. Ecology reserves the right to require further remedial action at  
20 the site pursuant to WAC 173-340-420. This provision shall remain in effect for the duration of  
21 the Decree.

## 22 XXIV. PUBLIC PARTICIPATION

23 Ecology shall maintain the responsibility for public participation at the site. However,  
24 Time shall cooperate with Ecology and, if agreed to by Ecology, shall:

25 A. Prepare drafts of public notices and fact sheets at important stages of the remedial  
26 action, such as the submission of work plans, Remedial Investigation/Feasibility Study reports

1 and engineering design reports. Ecology will finalize (including editing if necessary) and  
2 distribute such fact sheets and prepare and distribute public notices of Ecology's presentations  
3 and meetings;

4 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
5 and fact sheets, and before major meetings with the interested public and local governments.  
6 Likewise, Ecology shall notify Time prior to the issuance of all press releases and fact sheets, and  
7 before major meetings with the interested public and local governments;

8 C. Participate in public presentations on the progress of the remedial action at the  
9 site. Participation may be through attendance at public meetings to assist in answering questions,  
10 or as a presenter;

11 D. Maintain an internal information repository at Time's corporate headquarters,  
12 2737 West Commodore Way, Seattle WA 98199-1233. Provide copies of documents to be  
13 placed in public information repositories at Ecology's Southwest Regional Office at 300  
14 Desmond Drive, Lacey, Washington, and Field Office at 2108 Grand Boulevard, Vancouver,  
15 Washington. At a minimum, copies of all public notices, fact sheets, and press releases; all  
16 quality assured ground water, surface water, soil sediment, and air monitoring data; remedial  
17 actions plans, supplemental remedial planning documents, and all other similar documents  
18 relating to performance of the remedial action required by this Decree shall be promptly placed in  
19 these repositories.

## 20 XXV. DURATION OF DECREE

21 This Decree shall remain in effect and the remedial program described in the Decree shall  
22 be maintained and continued until Time has received written notification from Ecology that the  
23 requirements of this Decree have been satisfactorily completed. Ecology shall issue such  
24 notification within sixty (60) days after the requirements of this Decree have been satisfactorily  
25 completed. Thereafter the parties within thirty (30) days shall jointly request that the court  
26 vacate this Consent Decree. Upon meeting the cleanup standards and remedial action objectives

1 as described in Section 2.0 of the Cleanup Action Plan (Exhibit B), in each area of concern that is  
2 described in Section 1.3 of the Cleanup Action Plan, Ecology shall issue a Certification of  
3 Completion within sixty (60) days after such action has been completed.

4 **XXVI. CLAIMS AGAINST THE STATE**

5 Time hereby agrees that it will not seek to recover any costs accrued in implementing the  
6 remedial action required by this Decree from Ecology; and further, that Time will make no claim  
7 against the State Toxics Control Account or any Local Toxics Control Account for any costs  
8 incurred in implementing this Decree. Except as provided above, however, Time expressly  
9 reserves its right to seek to recover any costs incurred in implementing this Decree, from any  
10 other potentially liable person.

11 **XXVII. COVENANT NOT TO SUE**

12 In consideration of Time's compliance with the terms and conditions of the Decree,  
13 Ecology covenants not to institute legal or administrative actions against Time regarding  
14 contamination covered by this Decree unless confirmational monitoring demonstrates that  
15 additional remedial actions are necessary at the Site to attain MTCA cleanup standards within the  
16 reasonable restoration time frame set forth in the Cleanup Action Plan, Exhibit B (CAP). Until  
17 cleanup standards are met at this Site, compliance with this Decree shall satisfy Time's cleanup  
18 obligation for the release or threatened release of hazardous substances covered by the terms of  
19 this Decree, unless, as noted above, confirmational monitoring demonstrates that additional  
20 remedial actions are necessary at the Site to attain MTCA cleanup standards within the  
21 reasonable restoration time frame set forth in the CAP.

22 The terms and application of this Consent Decree are strictly limited to the Site  
23 specifically defined in Exhibit A and to those hazardous substances which Ecology knows to be  
24 located at or migrating from the Site as of the entry of this Decree. This Consent Decree shall  
25 not be applicable to any other hazardous substance or area, and Ecology retains all of its authority  
26 relative to such substances and areas.

1           A.     Ecology specifically reserves the right to institute legal or administrative action  
2 against Time seeking to require them to perform additional response actions at the Site, and to  
3 pursue appropriate cost recovery in accordance with provisions set out in RCW 70.105D.050,  
4 under the following circumstances:

5           (1)     Upon Time's failure to meet the requirements of this Decree, including, but not  
6 limited to, failure of the remedial action to meet the cleanup standards identified in the  
7 Cleanup Action Plan (Exhibit B).

8           (2)     Upon Ecology's determination that action beyond the terms of this Decree is  
9 necessary to abate an imminent and substantial endangerment to public health or welfare  
10 or the environment.

11          (3)     Upon Ecology's determination that additional remedial actions are necessary to  
12 achieve cleanup standards within the reasonable restoration time frame set forth in the  
13 CAP;

14          (4)     In the Event new information becomes available regarding factors previously  
15 unknown to Ecology, including the nature or quantity of hazardous substances at the Site,  
16 and Ecology determines, in light of this information, that further remedial action is  
17 necessary at the Site to protect human health or the environment, and Time, after notice,  
18 fails to take the necessary action within a reasonable time.

19          B.     Any Covenant Not to Sue concerning work performed under this Consent Decree  
20 shall have no applicability whatsoever to:

21          (1)     Criminal liability;

22          (2)     Liability for damages to natural resources;

23          (3)     Any Ecology action against potentially liable persons not a party to this Decree,  
24 including cost recovery.

1 XXVIII. EFFECTIVE DATE

2 This Decree is effective upon the date it is entered by the Court.

3 XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

4 This Decree has been the subject of public notice and comment under RCW  
5 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a  
6 more expeditious cleanup of hazardous substances at the site.

7 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at  
8 the option of any party and the accompanying Complaint shall be dismissed without costs and  
9 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

10 XXX. CONTRIBUTION PROTECTION

11 A. With regard to claims or cross-claims for contribution against Time for Matters  
12 Addressed in this Decree, the parties hereto agree that Time is entitled to contribution protection  
13 from any actions, claims, or cross-claims pursuant to MTCA, RCW 70.105D.080, CERCLA §  
14 107 or 113, or any other federal or state claim or cross-claim seeking, under other theories,  
15 substantially similar relief, to the fullest extent allowed by MTCA, RCW 70.105D.080,  
16 CERCLA § 107 or 113(f)(2). The contribution protection conferred in this section shall not be  
17 frustrated by the use of non-CERCLA or non-MTCA theories to seek relief in the nature of  
18 contribution or indemnification. For the purpose of this paragraph, "Matters Addressed" shall  
19 include all past and future investigation and remedial measures taken at the Site by Time  
20 pursuant to this Decree or under Ecology oversight.

21 B. The percentage of response costs paid by Time under this Decree shall not in any  
22 way constitute an admission as to an appropriate allocation of liability, if any, at the Site. This  
23 Section XXX shall apply to, but is not limited to, successors in interest who assume obligations  
24 under this Decree.



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**XXXI. RESERVATION OF RIGHTS**

By agreeing to this Decree, Time and Ecology agree to abide by its items. The execution and performance of the Decree is not, however, an admission by Time of any fact or liability for any purpose other than as a foundation for the entry of this Decree. Times' performance under the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of further administrative proceedings or litigation not associated with, or related to, this Decree.

**STATE OF WASHINGTON**  
Department of Ecology

\_\_\_\_\_  
JAMES PENDOWSKI, Program Manager  
Toxics Cleanup Program  
(360) 407-6103

\_\_\_\_\_  
Date

**CHRISTINE O. GREGOIRE**  
Attorney General

\_\_\_\_\_  
MAIA D. BELLON, WSBA #24777  
Assistant Attorney General  
(360) 407-0328

\_\_\_\_\_  
Date

**TIME OIL, CO.**

\_\_\_\_\_  
TERRILL L. HENDERSON  
Vice-President

\_\_\_\_\_  
Date

DATED this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
JUDGE  
Clark County Superior Court

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